

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

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JONATHAN McPHEE,  
Plaintiff,

v.

SYMPHONY NEW HAMPSHIRE,  
Defendant.

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) Civil Action No. 1:18-cv-00322-LM  
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)

**OBJECTION TO PLAINTIFF'S MOTION FOR SANCTIONS  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 37**

NOW COMES Defendant Symphony New Hampshire ("SNH"), by and through its attorneys, Primmer Piper Eggleston & Cramer PC, and objects to Plaintiff Jonathan McPhee's ("McPhee") Motion for Sanctions Pursuant to Federal Rule of Civil Procedure 37 (the "Sanctions Motion") and states:

1. Throughout the course of this case, SNH has made a diligent and good faith effort to timely produce all responsive documents to McPhee's ninety-seven (97) separate document requests, several informal follow up requests, and three (3) sets of interrogatories.

2. SNH's efforts have included several *sua sponte* actions whereby SNH located and produced responsive documents when alerted to the possibility of their existence.

3. McPhee's accusation of intentional withholding and bad faith is unsupported by the history of this case and belied by SNH's actual good faith actions to timely produce responsive documents.

4. McPhee's requests for sanctions are not supported by the law or facts in this case and should be denied.

5. As explained in SNH's Memorandum of Law filed herewith, SNH pursued diligent discovery efforts and the recently produced documents have no material impact on this case.

6. For the reasons set forth in SNH's Memorandum of Law filed herewith, McPhee's Sanctions Motion should be denied irrespective of which factors this Court considers under applicable law.

7. If this Court believes some relief should be granted to McPhee with respect to the pending summary judgment pleadings, limited supplemental summary judgment submissions on the narrowly identified sections of the summary judgment motion identified in the Sanctions Motion would be sufficient to address all of McPhee's concerns.

WHEREFORE, Defendant SNH respectfully requests that this Honorable Court:

- A. Deny the Sanctions Motion in its entirety; or
- B. Alternatively, Order limited additional briefing on summary judgment confined to the issues identified in McPhee's Sanctions Motion and limited to one supplemental pleading by McPhee and one supplemental response by SNH with appropriate page limits; and
- C. Grant such other relief as the Court deems just.

Respectfully submitted,

SYMPHONY NEW HAMPSHIRE,

By its attorneys,

PRIMMER PIPER EGGLESTON & CRAMER PC,

Dated: November 27, 2019      By: /s/ Thomas J. Pappas, Esq.  
Thomas J. Pappas, Esq., (N.H. Bar No. 4111)  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading has this day been forwarded via the Court's Electronic Case Filing System to Lauren S. Irwin, Esq., Heather M. Burns, Esq. and Brooke Lois Lovett Shilo, Esq.

Dated: November 27, 2019

By: /s/ Thomas J. Pappas, Esq.  
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)